FAIRFIELD MINING CO., INC.

IBLA 82-360 Decided August 10, 1982

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring mining claims, I MC 22834 through 22846 or portions of those claims null and void ab initio.

Dismissed in part; affirmed in part; set aside and referred to Hearings Division in part.

1. Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land

   Where mining claims were originally located on land which was withdrawn from mineral location, the claims will be declared null and void ab initio.

2. Mining Claims: Location--Mining Claims: Relocation-- Mining Claims: Withdrawn Land

   An amended location notice generally relates back to the date of the original location notice. A location notice cannot be considered an amended location, so as to relate back to a location which predates a withdrawal to the extent such location notice describes new land not contained in the original location.

3. Mining Claims: Generally--Mining Claims: Determination of Validity--Mining Claims: Location--Mining Claims: Relocation--Mining claims: Withdrawn Land

   Where there are factual questions relating to whether a refiling subsequent to a withdrawal was in the nature of an "amended location" or whether it constituted a "relocation," the matter will be referred for a hearing to allow the claimant the opportunity to show that the subsequent filing is an amended location,

and that it is thus the successor in an unbroken chain of title dating back to the original location.

APPEARANCES: John F. Varin, Esq., Gooding, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Fairfield Mining Company, Inc. (Fairfield), appeals from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated November 24, 1981, declaring certain mining claims null and void ab initio to the extent those claims were located on land which had been withdrawn from mineral entry at the time of location by Secretarial Order dated November 14, 1908, which withdrew approximately 77 acres by metes and bounds description in sec. 27, T. 5 N., R. 13 E., Boise meridian, for use as a Forest Service administrative site or by public Land Order (PLO) No. 3396, May 18, 1964, which withdrew lot 6 and NW 1/4 SW 1/4, sec. 3, T. 4 N., R. 13 E., Boise meridian, for use as a Forest Service recreation area. 1/

In the statement of reasons for appeal appellant limited its appeal to the Alameda Nos. 4 and 5 mining claims and specified the sole issue to be whether those claims were located prior to May 18, 1964, the date of PLO 3396. 2/ Appellant withdrew its appeal as it related to all other claims referenced in the November 24, 1981, decision. Therefore, as to those claims, the appeal is dismissed.

[1] In order to prevail with respect to the Alameda No. 4 and Alemeda No. 5 claims, appellant must establish that it is the successor to an interest in mining claims located on the land before its withdrawal from mineral entry, as claims which are located on land which is withdrawn from mineral location are null and void ab initio. American Resources, Ltd., 44 IBLA 220 (1979).

1/ The following placer mining claims, located in Ts. 4 and 5 N., R. 13 E., Boise meridian, Idaho, within the Sawtooth National Forest, were referenced in BLM's Nov. 24, 1981, decision:

		Camas County		
		Location	Recordation	Instrument
Claim Name	Locator	Date	Date	No.
Alameda No. 1	Jane Wade, et al.	2/21/74	3/28/74	42036
Alameda No. 2	Charles Delaney, et al.	2/21/74	3/28/74	41035
Alameda No. 3	William Walker, et al.	2/21/74	3/28/74	42037
Alameda No. 4	Emmitt Corrigan, et al.	2/21/74	3/28/74	42034
Alameda No. 5	LeRoy A. Washburn, et al.	2/21/74	3/28/74	42028
Princeton No. 1	Josephine Hents, et al.	2/21/74	3/28/74	42029
Princeton No. 2	Alva Jakes, et al.	2/21/74	3/28/74	42030
Princeton No. 3	LeRoy A. Washburn, et al.	2/21/74	3/28/74	42031
Princeton No. 4	Jerry Wilde, et al.	2/21/74	3/28/74	42032
Princeton No. 5	Danny Bava, et al.	2/21/74	3/28/74	42033
Princeton No. 6	Robert W. Uhl, et al.	7/1/51	7/14/51	-----
Princeton No. 7	LeRoy Washburn, et al.	6/1/52	6/23/52	30003
Princeton No. 8	Joe Kehrer, et al.	6/2/52	6/23/52	30004

2/ PLO 3396 was published on May 22, 1964, in 29 FR 6683.

In the statement of reasons for appeal, appellant asserts that Fairfield was formed in 1954 as an Idaho corporation for the purpose of conducting mining operations and other similar purposes; that the incorporators had located certain mining claims, including Alameda Nos. 4 and 5; that in return for an interest in the corporation, the incorporators granted Fairfield an interest in the mining claims; and that the original locations were made on June 23, 1952. Appellant attached a copy of those original location notices. Appellant states that Fairfield has continued to operate and retain its interest in the claims to the present. Appellant further alleges that on October 20, 1971, LeRoy Washburn, president and general manager of Fairfield, recovered a judgment against Fairfield, and on November 2, 1971, a writ of execution required the Sheriff of Camas County to sell certain mining claims which included Alameda Nos. 4 and 5; that on December 1, 1971, a sale was held at the Camas County Courthouse at which time Washburn purchased all the interest and assets owned by Fairfield which included the Alameda Nos. 4 and 5 claims; and that Washburn thereafter operated Fairfield. Appellant states that on February 21, 1974, amended location notices were filed for the Alameda Nos. 4 and 5 claims, as well as for other claims.

Appellant asserts that the amended location notices were filed to verify the interest of Fairfield in those claims rather than to serve as the original notice of location; that the 1974 amended locations were made by a group of people who had an interest in Fairfield; and that these individuals subsequently deeded their interest therein to Fairfield as reflected by certain quitclaim deeds recorded in the records of Camas County, Idaho. Copies of those quitclaim deeds involving Alameda Nos. 4 and 5 claims were attached to the statement of reasons. An affidavit made by the widow of LeRoy Washburn was also attached to the statement of reasons and that affidavit confirms appellant's position regarding the reasons for the 1974 filing.

Finally, based upon the facts as set forth in the statement of reasons, appellant argues that the claims were properly located on June 23, 1952, and continue to be valid mining claims though transferred through a series of deeds such that they are currently owned by appellant and as such predate the withdrawal of PLO 3396 and as such remain valid.

The essential question in this appeal is whether the documents filed in 1974 were amended notices of location or whether they were new locations or relocations made after the land had been withdrawn. Nothing on the face of the notices indicates that they were amended notices or relocations. However, there is no requirement that an amended location or a relocation state that this is its purpose on its face. R. Gail Tibbetts, 43 IBLA 210, 228, 86 I.D. 538 (1979).

In the Tibbetts case at 219, 86 I.D. at 543 (1979), the Board held:

> that to the extent that an amended location, i.e., one made in furtherance of an original location, merely changes a notice of location without attempting to enlarge the rights appurtenant to the original location, such amended location relates back to the original. Examples of such amended locations would be a change in the name of the claim (Butte Consolidated Mining Co. v. Barker, 35 Mont. 327, 89 P. 302, aff'd on rehearing, 90 P. 177 (1907);

Seymour v. Fisher, 16 Colo. 188, 27 P. 240 (1891)), the exclusion of excess acreage so long as the original discovery point is preserved (see Waskey v. Hammer [223 U.S. 85 (1912)]), and a change in the record owners of a claim where such change is reflective of an existing fact (United States v. Consolidated Mines & Smelting Co., 455 F.2d 432, 441 (9th Cir. 1971); Thompson v. Spray, 72 Cal. 528, 14 P. 182 (1887)).

In contrast a relocation does not relate back to the date of filing of the original notice of location. American Resources, Ltd., supra at 223 (1979). 3/

[2] Initially, we will discuss the record facts concerning the Alameda No. 5 claim. Appellant has provided a copy of placer mining location notice for the Alameda No. 5 claim which was recorded in Camas County, Idaho, on June 23, 1952 (Exh. B attached to statement of reasons). This notice describes a claim of 80 acres located by four co-locators. The copy of the location notice for the Alameda No. 5 claim dated February 21, 1974, names eight co-locators and describes 160 acres. Appellant has termed this 1974 location notice an "amended" location. Clearly, it is not. Although the 1974 location embraces the 80 acres included in the 1952 location, it also describes 80 additional acres. The Board held in Lairy Brookshire, 56 IBLA 73 (1981), that a location notice could not be considered an amended location, so as to relate back to a location which predates a withdrawal, where the location notice only describes new land not contained in the original location.

To the extent that the 1974 location of the Alameda No. 5 claim describes additional land it must be considered a new location or a relocation. As such, the rights of the locators must date from the 1974 location. Since that location was subsequent to the 1964 withdrawal, to the extent the land added in the 1974 relocation of the Alameda No. 5 lies within the withdrawn area it was properly declared null and void ab initio by BLM.

[3] We now turn to the Alameda No. 4 claim and the remainder of the Alameda No. 5. With respect to the Alameda No. 4 claim both the 1952 location notice (Exh. A attached to the statement of reasons) and the 1974 location notice name eight co-locators and describe the same 160 acres. 4/

3/ In the same case at page 223 the Board described a "relocation" as "the subsequent location of a claim which is adverse to an earlier location, as where the earlier locator has abandoned the claim or failed to make annual expenditure as required. The relocation of the claim by another person after the withdrawal of the land where it is situated does not give him the rights associated with the earlier location, including the right to mine the property even after it is withdrawn."

4/ Idaho law provides for amendments to notices of location as follows:

"If at any time the locator of any mining claim heretofore or hereafter located, or his assigns, shall apprehend that his original certificate was defective, erroneous, or that the requirements of law had not been complied with before filing, or shall be desirous of changing the surface boundaries,

While the 1974 location could be construed as an amended location, there is presently no showing in the record that appellant is the successor to an unbroken chain of legal title to the claims extending back before the withdrawal of the land in 1964, as suggested in the statement of reasons. There is no documentation verifying the 1954 transfer of interest in the claims from the original locators to appellant nor is there documentation of the December 1, 1971, sale which resulted from the October 20, 1971, judgment rendered against the corporation. Appellant has only provided evidence of the original 1952 location together with the 1974 filing and a copy of the 1974 quitclaim deeds, thus leaving a gap in the chain.

Appellant submitted an affidavit made by Helen E. Washburn which stated that the refiling of locations in 1974 was to supplement and clarify the sheriff's deed issued as a result of a suit brought by LeRoy Washburn against the Fairfield Mining Company, Inc. The affidavit further contained the assertion that the refiling was not done as a result of any flaws or concerns of invalidity in prior location notices. In the present situation, the affidavit, although not proof of the facts contained therein, constitutes sufficient evidence to warrant further inquiry or investigation. 3 Am. Jur. 2d Affidavits §§ 28, 29 (1962).

In United States v. Consolidated Mines & Smelting Co., 455 F.2d 432 (9th Cir. 1971), the Court of Appeals for the Ninth Circuit held that a hearing is required where there is a disputed issue of fact whether the interests of the present mining claimant are adverse to the interests of prior locators (i.e., whether the filing is a "relocation") or whether instead the present owner was the successor to these earlier interests (i.e., whether the filing is an "amended location"). As appellant may be able to establish an unbroken chain of title through previous claimants back to the 1952 location, which would predate the withdrawal, it is appropriate to refer the matter for for a hearing to allow the opportunity to do so. American Resources, Ltd., supra. Appellant's request for a hearing is granted with respect to the Alameda No. 4 claim. The request is also granted with respect to the remainder of the Alameda No. 5 claim. Appellant may be able to establish a chain of title back to the 1952 location for the 80 acres common to the 1952 and 1974 locations. 5/

---

fn. 4 (continued)
or of taking any part of an overlapping claim which has been abandoned, or in case the original certificate was made prior to the passage of this law, and he shall be desirous of securing the benefits of this chapter, such locator or his assigns may file an additional certificate subject to the conditions of this chapter, and to contain all that this chapter requires an original certificate to contain: provided, that such amended location does not interfere with the existing rights of others at the time when such amendment is made."
Idaho Code § 47-605 (1977).

5/ We note that since these claims were association placers, numerous individual locators were involved. Appellant's own submissions raise serious questions concerning whether the 1974 locations were made by "dummy" locators and, as such, constituted a fraud upon the Government. If the 1974 locations were made at the behest of Washburn rather than independently by the named

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed as to the Alameda Nos. 1 through 3 claims and the Princeton Nos. 1 through 8 claims and affirmed as to that part of the land added to the Alameda No. 5 claim by the 1974 relocation which lies within the withdrawn area. The decision as to the Alameda No. 4 and the remainder of the alameda No. 5 claim is set aside and the case file is referred to the Hearings Division for the assignment of an Administrative Law Judge to conduct a hearing. Appellant will have the burden of showing that the 1974 location notice for the Alameda No. 4 was an amended location rather than a new location or a relocation, and of establishing an unbroken chain of title dating back to the original location. The Judge shall issue an initial decision which may be appealed by any party adversely affected.

Bruce R. Harris
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

---

fn. 5 (continued).
co-locators and for their own benefit they were absolutely void. As the Ninth Circuit noted in Nome & Sinook Co. v. Snyder, 187 F. 385 (1911),

"It follows, therefore, with exact logic, that five persons may by means of proper association make valid location of 100 acres in one claim, so that it did not include more than 20 acres to each individual. This does not mean that while the five may, by associating themselves together, locate 100 acres in one claim, one or two of the five can acquire by such location substantially all of the claim, leaving the others with proportionately a very small or nominal interest therein, but that each must acquire an interest not to exceed 20 acres.

"* * * Any scheme or device entered into whereby one individual is to acquire more than that amount or proportion in area constitutes a fraud upon the law, and consequently a fraud upon the government, from which the title is to be acquired and any location made in pursuance of such a scheme or device is without legal support and void."

Id. at 388 (emphasis supplied). Thus, if the individual locators in 1974 acted merely to confirm Washburn's title, such action was both void and fradulent. The Judge should take evidence on this point. If the 1974 locations were void, the Judge should examine the question whether there was any proper recordation of the 1952 claims under section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976).